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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2013-0057]

RIN 0579-AD84

Expansion of Areas in the Philippines Considered Free of Mango Seed Weevil and Mango Pulp Weevil and Establishment of a Lower Irradiation Dose as a Treatment for Mango Pulp Weevil

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the list of designated pest-free areas for mango seed weevil and mango pulp weevil within the Philippines. We are also amending the Plant Protection and Quarantine Treatment Manual to establish a specific approved dose of irradiation as an authorized treatment for mango pulp weevil. These actions are necessary because surveys have determined that additional areas within the Philippines are free of mango seed weevil and mango pulp weevil. Additionally, we have determined that the mango pulp weevil can be neutralized with a lower dose of irradiation than the current generic dose for most plant pests of the class Insecta.

EFFECTIVE DATE: [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Mr. Juan A. (Tony) Román, Senior Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 851-2242.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-71, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into and within the United States from certain parts of the world to prevent the introduction of plant pests into the United States.

Prior to the effective date of this final rule, the regulations only allowed mangoes (Mangifera indica L.) to be imported into the continental United States from the Philippines if they were produced on the island of Guimaras, which was determined to be free of both Sternochetus mangiferae (mango seed weevil) and S. frigidus (mango pulp weevil). Mangoes from all other areas of the Philippines except Palawan were eligible for importation into Hawaii and Guam only. Mangoes from the island of Palawan were prohibited entry into all areas of the United States due to the presence of mango pulp weevil.

However, the national plant protection organization (NPPO) of the Philippines requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to recognize additional areas of that country as being free of mango seed weevil and mango pulp weevil. Specifically, the Government of the Philippines asked that we recognize the mango growing regions of Luzon, Visayas, and Mindanao as free of mango seed weevil and mango pulp weevil and the island of Palawan as free of mango seed weevil.

In response to the request by the NPPO of the Philippines, we prepared a commodity import evaluation document (CIED) entitled "Recognition of Mango Production Sites That are Free of Mango Seed Weevil, Sternochetus mangiferae and Mango Pulp Weevil, Sternochetus frigidus in the Philippines."

Based on the evidence presented in the CIED, on April 10, 2014, we published in the Federal Register (79 FR 19838-19840, Docket No. APHIS-2013-0057) a proposal¹ to amend the list of designated pest-free areas for mango seed weevil and mango pulp weevil within the Philippines. We also proposed to amend the box labeling restriction in § 301.56-33(d) and the additional declaration requirement in § 319.56-33(e) to refer to areas that are free of mango seed weevil and mango pulp weevil in accordance with the regulations in § 319.56-5 rather than to specific areas. This allows us to update the list of pest-free areas through a notice published in the Federal Register in accordance with § 319.56-5 rather than a proposed rule.

In addition, the proposed rule provided notice of a new pest-specific irradiation dose of 165 Gy that we determined is effective against mango pulp weevil in mangoes. The reasons for that determination were described in a treatment evaluation document (TED) we prepared in support of that action. Therefore, we proposed to allow the importation of mangoes from areas of the Philippines that are either free of mango pulp weevil or that are treated for that pest with the new pest-specific irradiation dose. Because the Plant Protection and Quarantine (PPQ) Treatment Manual also lists a pest-specific irradiation dose of 300 Gy for mango seed weevil, which was not previously reflected in the regulations, we also proposed to allow the importation of mangoes from areas of the Philippines that are either free of mango seed weevil or that are treated for that pest in accordance with the authorized pest-specific irradiation dose listed in the Treatment Manual. Finally, we proposed to amend the regulations to allow the use of any approved treatments for Bactrocera fruit flies rather than specifically with vapor heat. This allows for the treatment of mangoes from the Philippines with the new irradiation dose for

¹ To view the proposed rule, supporting documents, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0057>.

mango pulp weevil or the current irradiation dose for mango seed weevil, both of which exceed the minimum irradiation dose approved for the treatment of Bactrocera fruit flies.

We solicited comments on the proposed rule for 60 days ending June 9, 2014. We received eight comments by that date. They were from private citizens, an industry group, and representatives of State and foreign governments. One commenter supported the proposed rule. One commenter raised issues that were not germane to the proposed rule. The issues raised by the other commenters are discussed below.

The majority of commenters objected to the importation of Philippine mangoes into Hawaii because Hawaii also produces mangoes and they were concerned that the importation of mangoes from the Philippines could cause economic harm to domestic growers or because of concerns that pests within the Philippines could be introduced into Hawaii on Philippine mangoes.

Prohibiting the importation of mangoes from the Philippines into Hawaii is limited by APHIS' statutory authority under the Plant Protection Act (PPA, 7 U.S.C. 7701 et seq.). Under the PPA, APHIS may prohibit the importation of a fruit or vegetable into the United States only if we determine that the prohibition is necessary in order to prevent the introduction or dissemination of a plant pest or noxious weed within the United States. APHIS does not have the authority to restrict imports solely on the grounds of potential economic effects on domestic entities that could result from increased imports. Moreover, Philippine mangoes are already eligible to be imported into Hawaii. Current imports from the Philippines comprise a negligible share of total fresh mango imports and the additional quantity of fresh mango that may be imported from the Philippines because of this rule is unlikely to make an appreciable difference

in the total quantity imported. Therefore, it is unlikely that this final rule will have a significant impact on U.S. mango growers.

Additionally, we do not agree with the commenters' concerns regarding a pest risk to Hawaii from the mangoes from the Philippines. Except for the Island of Palawan, where mango pulp weevil is present, all mango growing areas within the Philippines have been confirmed free of mango seed weevil and mango pulp weevil. Therefore, except for Palawan, the only pests of concern that could reasonably be expected to follow the pathway of mangoes from the Philippines are fruit flies of the genus Bactrocera. However, these pests are already required to be treated with vapor heat treatment in accordance with 7 CFR part 305. Since the authorization of Philippine mango imports into Hawaii, no pests of concern have been intercepted in commercial shipments of Philippine mangoes to the United States. This final rule authorizes the importation of mangoes from the Island of Palawan if treated with irradiation at a dose of 165 Gy. As stated in the TED, this treatment has been proven effective against mango pulp weevil.

Two commenters objected to Palawan's status as free of mango seed weevil as the island was not included in a 3-year survey to determine the presence of mango seed weevil in growing areas within the Philippines.

Palawan's freedom from mango seed weevil was determined based on historical records provided by the Philippine Bureau of Plant Industry. In the event that mango seed weevil is found in any shipment originating from Palawan, the export program will be suspended unless all shipments are treated with irradiation in accordance with 7 CFR part 305.

Two commenters suggested that all pests of mangoes be treated with irradiation at 165 Gy and stated that shipments of mangoes from the Philippines be prohibited entry into the United

States until it can be proven that treatment within the United States would not result in accidental pest introductions.

International Plant Protection Convention standards require that phytosanitary measures represent the least restrictive measures available and result in the minimum impediment to the international movement of people, commodities, and conveyances. Currently, mangoes from areas in the Philippines that are free of mango seed and mango pulp weevils are eligible for importation into the United States if treated for fruit flies with vapor heat or with irradiation at a minimum absorbed dose of 150 Gy. Treatment of mangoes from the Philippines with irradiation at 165 Gy or higher may be required only if the mangoes originate from the island of Palawan where mango pulp weevil is present or are found infested with pests that would justify a higher dose of irradiation. Higher irradiation doses cost more to administer and may affect the marketability of the product. Section 305.9 of the regulations outline safeguards required to prevent the accidental introduction of pests prior to treatment with irradiation at the port of entry within the United States. Such safeguards include, but are not limited to, not removing the packaging on untreated shipments prior to treatment and moving regulated articles in refrigerated or air-conditioned conveyances to minimize pest mobility. In the event that treatment is unable to be properly applied, the facility is also required to have a contingency plan in place for safely destroying or disposing of untreated articles. We believe these safeguards are adequate to prevent the accidental introduction of plant pests into the United States.

Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the Federal Register. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit from the availability of mangoes from an additional source. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the Federal Register.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This final rule is in response to a request from the Philippines to recognize additional areas (regions in Luzon, Visayas, and Mindanao) as free of mango seed weevil and mango pulp weevil, and the island of Palawan as free of mango seed weevil. Currently, fresh mango from the Philippines is enterable into the United States from the island of Guimaras, considered free of these weevils, subject to treatment to mitigate the risk associated with fruit flies of the genus Bactrocera.

In addition, APHIS is amending the PPQ Treatment Manual by adding irradiation at 165 Gy as an option to mitigate the risk associated with mango pulp weevil. This dosage also mitigates the risk associated with fruit flies of the genus Bactrocera.

In 2010 and 2011, fresh mango exports to the United States from the Philippines averaged about 42,000 pounds per year. U.S. mango imports from all sources averaged more

than 3.3 billion pounds per year between 2009 and 2012, with most coming from Mexico, Peru, Ecuador, Brazil, and Guatemala. Thus, imports from the Philippines comprise a negligible share of total fresh mango imports, less than 0.002 percent. Given the Philippines' current very small share and the proximity of major Latin American sources, the additional quantity of fresh mango that may potentially be imported from the Philippines because of this rule is unlikely to make an appreciable difference in the total quantity imported.

U.S. mango production (about 6.6 million pounds per year) is equivalent to 0.2 percent of total imports. Most if not all mango farms are small entities in Florida, California, Texas, and Hawaii, where the fruit is primarily marketed locally. Any effect for these farms and for mango importers of additional fresh mango imports from the Philippines will be inconsequential, given the very small change expected to total imports.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows mangoes to be imported into the United States from the Philippines. State and local laws and regulations regarding mangoes imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.56-33 is amended by revising paragraphs (a), (b), (d), and (e) to read as follows:

§ 319.56-33 Mangoes from the Philippines.

* * * * *

(a) Limitation of origin. The mangoes must have been grown in an area that the Administrator has determined to be free of mango seed weevil (Sternochetus mangiferae) and mango pulp weevil (Sternochetus frigidus) in accordance with § 319.56-5 or be treated for mango seed weevil and mango pulp weevil in accordance with the requirements in paragraph (b) of this section. Mangoes from areas of the Philippines that are not free of mango seed weevil or that are not treated for mango seed weevil are eligible for importation into Hawaii and Guam only.

(b) Treatment. The mangoes must be treated for fruit flies of the genus Bactrocera in accordance with part 305 of this chapter. Mangoes from areas that are not considered to be free of mango pulp weevil in accordance with § 319.56-5 must be treated for that pest in accordance with part 305 of this chapter. Mangoes from areas that are not considered to be free of mango seed weevil in accordance with § 319.56-5 must be treated for that pest in accordance with part 305 of this chapter or they are eligible for importation into Hawaii and Guam only.

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(d) Labeling. Each box of mangoes must be clearly labeled in accordance with § 319.56-5(e)(1). Consignments originating from areas that do not meet the requirements in paragraph (a) of this section for freedom from or treatment for mango seed weevil must be labeled “For distribution in Guam and Hawaii only.”

(e) Phytosanitary certificate. Mangoes originating from all approved areas must be accompanied by a phytosanitary certificate issued by the Republic of the Philippines Department of Agriculture that contains an additional declaration stating that the mangoes have been treated for fruit flies of the genus Bactrocera in accordance with paragraph (b) of this section either in the Philippines or at the port of first arrival within the United States. Phytosanitary certificates accompanying consignments of mangoes originating from pest-free mango growing areas within

the Philippines must also contain an additional declaration stating that the mangoes were grown in an area that the Administrator has determined to be free of mango seed weevil and mango pulp weevil or have been treated in accordance with paragraph (b) of this section.

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Done in Washington, DC, this 26th day of September 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

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